

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

UNITES STATES OF AMERICA

Plaintiff,

v.

3.17 ACRES OF LAND, more or less,
Situating in STARR COUNTY, TEXAS;
And JUAN MONTALVO, et al.,

Defendants.

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CASE NO. 7:08-CV-177

DEFENDANT ELISA D. GUTIERREZ'S STATUS REPORT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Elisa D. Gutierrez, Defendant in the above entitled and numbered cause, and file this Status Report in response to the Court's order dated October 26, 2018, and informs the Court as follows:

On or about June 21, 2008, the United States of America at the request of the Secretary of the Department of Homeland Security, through the Acting Executive Director, Asset Management, of U.S. Customs and Border Protection, filed a Complaint in Condemnation seeking a taking of property interests in approximately 3.17 acres of land in parcels identified as RGV-RGC-1005 and RGV-RGC-1005E, situated in Starr County, Texas. (Docket No. 1).

The only named Defendants at the time the Complaint in Condemnation was filed were Juan and Ascencion Montalvo, Raul and Noeliz M. Munoz, Adolfo and Sylvia M. Ramirez, and Carmen Pena. It appears that the Government estimated just compensation for parcels identified as RGV-RGC-1005 and RGV-RGC-1005E of \$10,900 which was deposited in the registry of the Court. (Docket No. 2). However, Elisa D. Gutierrez was not served with the Complaint in

Condemnation, nor was she consulted with or presented with good faith offers prior to the filing of the Complaint in Condemnation.

As seen by the “United States’ Response to the District Court’s Order for a Case Status Update,” as of August of 2013 the Government had yet to finalize title commitments, reports or policies on the tracts to be condemned in Starr County, Texas. (Docket No. 19).

Subsequently, on August 2, 2017, the Government filed an “Amended Complaint in Condemnation” seeking a taking of property interests in approximately 3.434 acres of land in parcels now identified as RGV-RGC-1104, RGV-RGC-1082, RGV-RGC-1081, RGV-RGC-1080, RGV-RGC-1079, RGV-RGC-1078 and RGV-RGC-1077, RGV-RGC-1079E, RGV-RGC-1078E, and RGV-RGC-1077E, situated in Starr County, Texas. (Docket No. 22). It is important to note that the original taking sought property interest in only 3.17 acres while the amended taking sought property interest in 3.434 acres. As seen by “Schedule “FF” Estimate of Just Compensation” incorporated in the Amended Declaration of Taking, the Government estimated the new total just compensation for the taking at \$26,600. (Docket 23). However, to date, it appears that no appraisals have been performed on the subject property.

It was not until eight years after the original Complaint in Condemnation was filed that Elisa D. Gutierrez was named as a Defendant and served with the Amended Complaint in Condemnation. However, Elisa D. Gutierrez was never consulted with or presented with good faith offers prior to the filing of the Amended Complaint in Condemnation. As such, on September 5, 2017, Elisa D. Gutierrez filed an Original Answer and Jury Demand asserting numerous defenses and objections to the Complaint in Condemnation, Amended Complaint in Condemnation, Declaration for Taking, and Amended Declaration for Taking. (Docket 30).

On November 13, 2018, Counsel for Elisa D. Gutierrez was contacted by Richard Kincheloe, Assistant United States Attorney, in order to discuss the pending matter and a potential resolution. In a good faith attempt to negotiate, Counsel for Elisa D. Gutierrez followed-up on the conversation with an e-mail that same afternoon asking to confirm the ownership in the property interests being taken and requesting a formal initial offer in writing. To date, no response by the Government has been provided.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully prays that:

1. This cause be dismissed for failure to state a claim and for lack of jurisdiction due to the fact that Plaintiff failed to fulfill the conditions precedent required of Plaintiff prior to commencing this condemnation proceeding;
2. In the alternative, that this cause be abated until Plaintiff complies with the provisions requiring negotiations with Defendant;
3. If this cause is not dismissed, that judgment be rendered denying Plaintiff's right to condemn Defendant's property referenced above;
4. In the alternative, if Defendant's property is condemned, that the Court consider all the objections and defenses set out above;
5. Defendant be allowed to recover all of her expenses for attorney's fees in defending against this condemnation proceeding pursuant to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC § 4654(a)(1) if applicable, and the Equal Access to Justice Act, Title 28 USC § 2412;
6. Defendant requests a trial by jury, pursuant to Rule 71.1(h)(1)(B) on the issue of just and adequate compensation; and
7. The Court grant Defendant such other and further relief to which she may be entitled to receive.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2018 a true and correct copy of the above and foregoing Defendants Response to the District Court's Order for a Case Status Update was served upon opposing counsel, to wit:

Richard A. Kincheloe
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/s/ THOMAS DANIEL KOENEKE
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